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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|-------------------|
| 10/685,244 | 10/14/2003 | Mikhail Belenkii | 496 | 5732 |
| 7590 | 08/24/2005 | | EXAMINER | |
| JOHN R. ROSS TREX ENTERPRISES 10455 PACIFIC CENTER CT. SAN DIEGO, CA 92121 | | | | RATCLIFFE, LUKE D |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3662 | |

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/685,244 | BELENKII ET AL. | |
| | Examiner Luke D. Ratcliffe | Art Unit 3662 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 October 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10, 12-14, 16, 17, 20-23 and 26 is/are rejected.

7) Claim(s) 11, 15, 18, 19, 24 and 25 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to because Figure 1A does not contain reference numerals 18A and 18B as described in the detailed description of the preferred embodiments. Figure 7 does not show the numerals for the beam splitter cube 18D, or the detectors 20A and 20B. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several

views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6, 13, 21, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Tavlarides (5074658).

Referring to claim 1 Tavlarides shows a disturbance means (figure 1 Ref. 16), an optical unit (figure 1 Ref. 18), a detector (figure 1 Ref. 36), and a processor (column 6 lines 10-15).

Referring to claim 3 Tavlarides shows a means for a drop injector (column 2 and 3).

Referring to claim 5 Tavlarides shows a means for a water droplet injector (column 2 and 3).

Referring to claim 6 Tavlarides shows a pattern producing unit (figure 1).

Referring to claim 13 Tavlarides shows a laser and laser optics (figure 1), an interference means (figure 1 Ref. 16), two optical detectors (figure 1 Ref. 36 and 38), and a correlation means (column 6 lines 10-15).

Referring to claim 21 Tavlarides shows a means for producing optical perturbations (figure 1), transmitting a laser beam (figure 1 Ref. 18), measuring at least two perturbed laser with at least two detectors (figure 1 Ref. 36 and 38).

Referring to claim 26 Tavlarides shows a tube section (figure 1), an optical element (figure 1 Ref. 18), a water drop injector (column 2 and 3), a detector (figure 1 Ref. 36), a focusing element (figure 1 Ref. 30), and a processor (column 6 lines 10-15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 13, 16, 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658).

Referring to claim 1 Kunz shows a fluid flow measurement system and Tavlarides shows a disturbance means (figure 1 Ref. 16), an optical unit (figure 1 Ref. 18), a detector (figure 1 Ref. 36), and a processor (column 6 lines 10-15). Kunz shows a fluid flow measurement system. It would have been obvious to modify Kunz to

include the teachings of Tavlarides because the optical system is a non-invasive accurate system to measure flow rate.

Referring to claims 4 and 20 Kunz shows a flow sensor that is used in a respirator or breathing tube (column 3).

Referring to claim 6 Tavlarides shows a pattern producing unit (figure 1). It would have been obvious to modify Kunz to include the pattern producing unit as taught by Tavlarides because this unit will increase the ability of the optical sensor to detect a disturbance.

Referring to claim 13 Kunz shows an optical flow rate measurement device and Tavlarides shows a laser and laser optics (figure 1), an interference means (figure 1 Ref. 16), two optical detectors (figure 1 Ref. 36 and 38), and a correlation means (column 6 lines 10-15). It would have been obvious to modify Kunz to include the teachings of Tavlarides because the optical system is a non-invasive accurate system to measure flow rate.

Referring to claim 16 it would be obvious to compare fringe data using oscilloscope because this is a well known way to compare multiple signals.

Referring to claim 21 Kunz shows an optical flow rate measurement device and Tavlarides shows a means for producing optical perturbations (figure 1), transmitting a laser beam (figure 1 Ref. 18), measuring at least two perturbed laser with at least two detectors (figure 1 Ref. 36 and 38). It would have been obvious to modify Kunz to include the teachings of Tavlarides because the optical system is a non-invasive accurate system to measure flow rate.

Referring to claim 22 Kunz as modified shows two detectors (Tavlarides Figure 1 Ref. 28 and 30). It would have been obvious to modify Kunz to use an oscilloscope to compare information from the two detectors because this is a well known way to compare multiple signals.

Referring to claim 26 Kunz shows an optical flow rate measurement device and Tavlarides shows a tube section (figure 1), an optical element (figure 1 Ref. 18), a water drop injector (column 2 and 3), a detector (figure 1 Ref. 36), a focusing element (figure 1 Ref. 30), and a processor (column 6 lines 10-15). It would have been obvious to modify Kunz to include the teachings of Tavlarides because the optical system is a non-invasive accurate system to measure flow rate.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658) as applied to claim 1 above, and further in view of Miller (4532811).

Miller shows a disturbance means of heating (column 2 lines 45-60). It would have been obvious to further modify Kunz to include the heating of Miller because this is a common means of creating a disturbance.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658) as applied to claim 1 above, and further in view of Rizzo (3825346).

Referring to claim 3 Rizzo shows a means for a drop injector (figure 2 Ref. 13). It would have been obvious to modify Kunz to include the drop injector because this is a simple way to inject a disturbance into the gas stream.

Referring to claim 5 Rizzo shows a means for a water droplet injector (figure 2 Ref. 13). It would have been obvious to modify Kunz to include the water droplet injector because water is an efficient means to measure the movement of gas and is not harmful to humans if ingested.

Claim 7 and 8 are under 35 U.S.C. 103(a) as being unpatentable over Tavlarides (5074658) in view of Kaufmann (4948257).

Referring to claim 7 Kaufmann shows an optical unit that has lens grating (column 4 lines 25-50). It would have been obvious to modify Tavlarides to include the lens grating taught in Kaufmann because it is a simple and efficient way to measure the speed of the water that flows with the fluid that is to be measured.

Referring to claim 8 Tavlarides as modified shows a lens for focusing onto the detectors (figure 1 Ref. 30). It would have been obvious to modify Tavlarides to include the focusing lens because this is a well known method for focusing light onto a detector.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavlarides (5074658) in view of Kaufmann (4948257) as applied to claim 8 above, and further in view of Petersen (5549114).

Referring to claims 9 and 10 Petersen shows a method for using a microprocessor that uses the fast Fourier transform (FFT) (Column 8 lines 14-50). It would have been obvious to further modify Tavlarides to include the microprocessor that uses the FFT because this is a common method for converting time varying signals into temporal frequency information.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658) as applied to claim 5 above, and further in view of Miles (4988190).

Miles shows a detector array used in a method used to measure the flow of fluid (column 8 lines 45-70). It would have been obvious to use a detector array because these are commonly used when more than one detector is needed.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658) as applied to claim 13 above, and further in view of Miller (4532811).

Kunz as modified shows an optic beam passing through the fluid (Tavlarides figure 1) and a heating unit (Miller column 1 lines 50-56). It would have been obvious to modify Kunz to include the optic beam because this is a common method for measuring velocity of a moving substance. It would have been obvious to further modify Kunz to include the heating element talked about in Miller because heating is a common method for adding a disturbance to a fluid.

Claim 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz (2002/0007685) in view of Tavlarides (5074658) as applied to claim 13 and 21 above, and further in view of Wang (6369881).

Wang shows an algorithm that is run by a microprocessor that internally has an A to D and performs cross correlations (column 4 lines 44-60). It would have been obvious to have a processor use cross correlations because this is an effective way to compare multiple streams of data.

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Allowable Subject Matter

Claims 11, 15, 18-19, 24, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke D. Ratcliffe whose telephone number is 571-272-3110. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LDR

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